

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.**

In the Matters of)	
)	
International Comparison and Consumer)	GN Docket No. 09-47
GN Docket No. 09-137)	
Survey Requirements in the Broadband Data)	
Improvement Act)	
)	
A National Broadband Plan for Our Future)	GN Docket No. 09-51
)	
)	
Inquiry Concerning the Deployment of)	GN Docket No. 09-137
Advanced Telecommunications Capability to)	
All Americans in a Reasonable and Timely)	
Fashion, and Possible Steps to Accelerate Such)	
Deployment Pursuant to Section 706 of the)	
Telecommunications Act of 1996, as Amended)	
by the Broadband Data Improvement Act)	

**COMMENTS OF UNITED STATES CELLULAR CORPORATION
NBP Public Notice # 6**

United States Cellular Corporation ("USCC") hereby submits the following comments in response to the Commission's Public Notice, NBP Public Notice # 6, (DA 09-2100 Released: September 23, 2009), in the above-captioned proceeding regarding the sufficiency of current spectrum allocations for purposes of the Commission's development of a National Broadband Plan ("Public Notice").

Introduction

The Commission is right to ask whether " ... the United States will not have sufficient spectrum available to meet demands for wireless broadband in the near future." Our candid answer is that the Commission is facing a daunting challenge with

relatively little spectrum in the pipeline in the near term, and a pressing need to develop fair and equitable ways to expand access to competitive mobile broadband . In this context, it is essential that the FCC allocate what little spectrum is available in a manner that provides small, medium-sized, and rural carriers with a fair opportunity to acquire it and put it to use bringing competitive choice and great service to their customers. Historically such carriers have been the providers responsible for service in rural and other underserved areas and recent wireless industry trends have threatened the competitiveness of such carriers.¹ A fair allocation of spectrum is one crucial means by which the FCC can give such carriers a fighting chance to survive and prosper.

Discussion

Spectrum is the fundamental input of our industry and USCC firmly believes that spectrum share limits lead to market share limits, as well as to an absence of diversity, capacity and price competition among the mobile broadband providers. Also, unless the issue of spectrum disparity among mobile broadband providers is addressed in some way, all other measures to protect the benefits of competitive diversity in the marketplace are likely to be ineffective.²

The combination of increasing demand for data services and unequal distribution of spectrum resources works against the goal of a competitive market where customers freely choose providers and market shares are an outcome of customer preferences.

Spectrum constrained providers are effectively capped in their market share aspirations.

As they gain customers, they use up their network capacity. Since they lack spectrum,

¹ *See, e.g.*, Reply Comments of United States Cellular Corporation in GN Docket Nos. 09-157, 09-51, and WT Docket No. 09-66 filed October 22, 2009, pp. 1-14.

² *See, e.g.* Comments of NTELOS in WT Docket No. 09-66, filed September 30, 2009, pp. 7-9.

they can respond to demand only by splitting cells, which is capital intensive, limited by zoning considerations, and may ultimately not be cost effective. If they become less cost-competitive, they will become unprofitable or raise prices and lose customers – an unsustainable position.

In an ideal world the Commission's goal to promote diversity and competition could be met if it could provide adequate spectrum resources so that existing providers and new entrants would have “head room” to gain market share on an equitable basis. The reality at present is that there is precious little spectrum in the pipeline to meet current spectrum needs for commercial mobile wireless services, much less the exponential increase in spectrum resources required to meet the demands for mobile data services.

The Public Notice contains several insightful questions suggestive of the complexity of spectrum issues and the challenges inherent in forecasting demand and developing a long-term supply to meet that demand.. We would note, however, that the fundamental spectrum allocation issues now before the FCC are less complicated than the questions would suggest, owing precisely to the spectrum shortage to which the Public Notice refers. Consequently, we have focused our resources on addressing those issues in these comments.

As demonstrated by Sprint in the FCC's "innovation" proceeding,³ the amount of spectrum available in the next three to five years for wireless is relatively small. It includes:

- The AWS-2 H Block (1915-1920 MHz and 1995-2000 MHz);

³ See Comments of Sprint Nextel Corporation in GN Docket Nos. 09-157, and 09-51, filed September 30, 2009, p. 3.

- The AWS-2 J Block (2020-2025 MHz and 2175-2180 MHz);
- The Upper 700 MHz D Block (758-763 MHz and 788-793 MHz); and
- The AWS-3 band (2155-2175 MHz).

Each of these spectrum blocks is part of a complex proceeding which is yet to be completed.⁴ These proceedings should be concluded and the spectrum should be made available for commercial use, but in a manner that creates opportunities for small and mid-sized carriers and ensures appropriate interference protection for nearby bands already in service.

T-Mobile, in the same proceeding, has proposed a possible allocation of government spectrum in the 1755-1780 MHz band, which might be paired with the 2155-2180 MHz band.⁵ This would require the reconfiguration of the AWS-3 and AWS-2 spectrum which is already the subject of contested rulemaking proceedings and obtaining approval to share 1.7 GHz spectrum on which DoD and non-DoD governmental systems are currently deployed. We think T-Mobile's proposal has merit but the complexity of completing Commission proceedings to implement this reconfiguration underscores the challenges the Commission will have in attempting to supplement mobile broadband spectrum resources in the near term.

As the FCC has itself noted, the allocation of spectrum other than that identified by Sprint and T-Mobile will take many years and cannot now be as urgent as priority as

⁴ USCC discusses its proposal for the D Block in its Comments in GN Docket Nos. 09-157, 09-51 and WT Docket 09-66, filed September 30, 2009, pp. 14-17.

⁵ Comments of T-Mobile USA, Inc., in GN Docket Nos. 09-157, and 09-51, and WT Docket No. 09-66, filed September 30, 2009, p. 4

is the proper allocation of the spectrum referred to above.⁶

However and whenever the Commission allocates available new spectrum for commercial use, it cannot follow its practice in recent auctions, configuring some licenses in mega-regions that are accessible only to the largest carriers and then simply allowing the licenses to be sold to the highest bidder. Doing so will only further entrench the dominant position of the two largest companies. In Auction 73 AT&T Wireless and Verizon Wireless purchased \$16 billion of the \$19 billion worth of licenses offered, acquiring the overwhelming majority of the available spectrum.⁷ This outcome, coupled with a series of acquisitions before and after the auction, is dangerously concentrating the nation's spectrum resources. We submit that the only way to check this trend is to limit the amount of spectrum which any carrier can hold or acquire at auction on a market by market basis. This could be done by some form of spectrum cap for all spectrum below 2.3 GHz, as recommended by RTG⁸ or through some other means. USCC has not indicated its support for any particular form of spectrum limitation, but it urges the FCC to consider the issue in a separate proceeding.

Conclusion

The FCC must complete its pending proceedings to allocate spectrum for wireless uses, including wireless broadband. That should be its first priority. It must also do so in

⁶ *See, e.g.*, September 29, 2009, Commission Open Meeting Presentation on the States of the Commission's Processes for the Development of a National Broadband Plan, p. 73, (depicting the multiyear time periods taken to reallocate spectrum for the cellular, PCS, 700 MHz, and AWS-1 Services.).

⁷ *See*, Comments of MetroPCS Communications, Inc. in W.T. Docket No., 09-66, filed September 30, 2009, pp. 15-16.

⁸ Comments of Rural Telecommunications Group, Inc. in GN Docket No. 09-157, 09-51, filed September 30, 2009, pp. 4-5.

a manner which preserves and enhances the competitive opportunities of small, mid-sized and rural wireless carriers. If it does not do so, the duopoly position of Verizon Wireless and AT&T Wireless will become permanent, with the negative effects on competition which such a market structure inevitably creates.

Respectfully submitted,

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